

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA RICHMOND DIVISION**

In re:
CIRCUIT CITY STORES, INC., *et al.*,
Debtors.

Case No. 08-35653 (KRH)
Chapter 11
Jointly Administered

**RESPONSE OF MALLVIEW PLAZA COMPANY LTD. TO LIQUIDATING
TRUST'S FORTY-FIRST OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)
(Claim No. 6964)**

Mallview Plaza Company Ltd. ("Mallview") hereby files its response (the "Response") to the Liquidating Trust's Forty-First Omnibus Objection to Landlord Claims (the "Objection") [Docket No. 11852]. In the Objection, the Liquidating Trust asserts that Mallview's Claim No. 6964 (the "Claim"), filed on January 26, 2009 in the amount of \$ \$426,556.95 (and reduced by an Order granting the Trustee's Ninth Omnibus Objection to \$411,528.70) should be reduced and allowed in the sum of \$8,457.32.

Mallview opposes the relief sought by the Liquidating Trust in the Objection and asks that the Claim be allowed in the full amount in which it was filed, less the amount received in short term rental income (as described below). In support of its Response, Mallview states the following:

Stephanie N. Gilbert (VSB No. 77140)
Ross C. Reeves (VSB No. 13628)
Willcox & Savage, P.C.
Wells Fargo Center
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
(757)628-5622 (T)
(757)628-5566 (F)
Counsel to Mallview Plaza Company, Ltd

1. The Liquidating Trust's Objection asserts that the Claim should be reduced subject to modification upon timely receipt of mitigation information.

2. The Claim should not be reduced, but for the amount of actual short term rental income received, as described below, as Mallview was unable to mitigate the damages sought in its Claim.

3. Circuit City rejected the space it rented from Mallview effective December 31, 2008, pursuant to Bankruptcy Code Section 365(d)(2) and the procedures approved by this Court (the "Rejection").¹

4. But for two (2) brief periods,² Mallview has not been able to find a new tenant to rent the location that Circuit City occupied (store number 3712, located at 2190 West 4th St., Mansfield, OH 44906 (the "Location")).

¹ As of the December 31, 2009 effective date, Debtor had not returned to Mallview the keys to the leased premises. Mallview was informed by the Debtor's store manager that the keys were being sent directly to Mallview's corporate office, but these keys were never received. Mallview was required to retain a lock smith to change locks in order to gain entrance to the leased premises, the same being done on January 15, 2009. Therefore, Debtor retained possession of the premises and did not pay any rental obligations for the period January 1, 2009 through January 15, 2009.

² Mallview was able to enter into two short term leases for the Location: The first lease term was from April 25, 2011 through May 9, 2011 for lease with CDI Media Group, LLC [*see* Ex. A, attached hereto] and the second lease term was from August 1, 2012 through November 14, 2012 and with Spirit Halloween Superstores, LLC [*see* Ex. B, attached hereto] – both of which produced a combined gross rental income of \$29,000.

5. The Location remains empty despite an aggressive marketing campaign, which includes employing an in-house consultant to focus on releasing the Location, retaining commercial leasing agents (including, but not limited to M.E. Osborne Properties, located in Mentor, Ohio) to actively advertise and market the Location, circulating marketing brochures and e-mail blasts statewide to commercial real estate brokers and agents, and listing the property on numerous commercial websites such as LoopNet.com and Showcase.com.

6. These efforts made by Mallview have failed to secure a new tenant.

7. Based on these facts, it is clear that Mallview has been unable to mitigate the damages sought in its Claim.

8. The party with authority to discuss mitigation issues and the facts stated in this Response is the following:

Valerie Tolbert, Esq.
Carnegie Management and Development Corporation
27500 Detroit Road, Suite 300
Westlake, Ohio 44145
440-892-6800 phone
440-892-6804 fax
www.carnegiecorp.com
E-Mail: vtolbert@Carnegiecorp.com

WHEREFORE, Mallview requests that the Court deny the Liquidating Trust's Objection to its Claim No. 6964 and that claim be allowed by Court order in the amount of \$411,528.70, less the \$29,000 received in short term rental income for the Location.

Dated: June 26, 2012

MALLVIEW PLAZA COMPANY, LTD.

By: /s/ Stephanie N. Gilbert
Of Counsel

Stephanie N. Gilbert (VSB No. 77140)
Ross C. Reeves (VSB No. 13628)
Willcox & Savage, P.C.
Wells Fargo Center
440 Monticello Avenue, Suite 2200
Norfolk, Virginia 23510
(757)628-5622 (T)
(757)628-5566 (F)
Counsel to Mallview Plaza Company, Ltd.

CERTIFICATE OF SERVICE

I, Stephanie N. Gilbert, hereby certify that on the 26th day of June 2012, a true and correct copy of the foregoing Response of Mallview Plaza Company, Ltd. to Liquidating Trust's Forty-First Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (Claim No.6964) has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

/s/ Stephanie N. Gilbert